

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JUANA DOE I et al,

Plaintiffs

v.

IFC ASSET MANAGEMENT COMPANY,
LLC,

Defendant.

Civil Action No. 17-1494-VAC-SRF

**PLAINTIFFS' SURREPLY IN
OPPOSITION TO
DEFENDANT'S MOTION TO EXTEND
TIME**

Misty A. Seemans, DE Bar # 5975
O.P.D. (Pro Bono; cooperating attorney
with EarthRights International)
820 North French Street
Third Floor
Wilmington, DE 19801
Tel: (302) 577-5126
Email: misty@earthrights.org

Dated: November 28, 2017

Marco Simons
Richard Herz
Marissa Vahlsing
Sean Powers
EARTHRIGHTS INTERNATIONAL
1612 K Street NW, Suite 401
Washington, DC, 20006
Tel: (202) 466-5188

Jonathan Kaufman
LAW OFFICE OF JONATHAN KAUFMAN
341 W. 24th St. Apt. 21C, New York, NY 10011
Tel: (212) 620-4171

Judith Brown Chomsky
LAW OFFICES OF JUDITH BROWN
CHOMSKY
Post Office Box 29726, Elkins Park, PA 19027
Tel: 215-782-8367

Jose Luis Fuentes
LAW OFFICES OF JOSE LUIS FUENTES
2625 Alcatraz Ave, No 213
Berkeley, California 94705
Counsel for Plaintiffs

Plaintiffs' opposition showed that transfer is impermissible unless Defendant could show that *both* this Court and the transferee court have jurisdiction, and that Defendant cannot meet its burden because it intends to argue that it is immune from suit in both jurisdictions. DI 19 at 3-5. Defendant's responses regarding jurisdiction in each forum misconstrue the law.

Defendant argues that this Court need not determine its own subject matter jurisdiction before transfer, citing *In re: Howmedica Osteonics Corp.*, 867 F.3d 390, 404 n.8 (3d Cir. 2017). But the court found that in many cases jurisdiction would be considered at later steps in the analysis, *id.* at 408; if it contemplated that transfer without jurisdiction could ever be proper, the cited language is *dicta*, because the district court had subject matter jurisdiction. *Id.* at 399 n.5. *Howmedica Osteonics Corp.* did not overrule the Third Circuit's prior holding that "a court may not transfer a matter over which it lacks jurisdiction." *Shendock v. Director, Office of Workers' Compensation Programs*, 893 F.2d 1458, 1467 (3d Cir. 1990) (citing *Atlantic Ship Rigging Co. v. McLellan*, 288 F.2d 589, 591 (3d Cir. 1961)).

Regardless, Defendant concedes that it must show there is subject matter jurisdiction in D.D.C., but suggests that the D.C. court would have subject-matter jurisdiction over this case due to diversity alone. This ignores the fact that any immunity defense, if valid, would defeat subject-matter jurisdiction. Indeed, Defendant's motion to dismiss in D.D.C. on immunity grounds was filed for lack of subject matter jurisdiction under Rule 12(b)(1), and the D.C. Circuit has repeatedly held that immunity under the IOIA defeats subject-matter jurisdiction. *E.g., Zuz̃a v. Office of the High Representative*, 857 F.3d 935, 938 (D.C. Cir. 2017).

Defendant can only meet its burden of showing that jurisdiction is proper in both fora if it waives immunity. Otherwise, this Court cannot transfer without addressing immunity.

Dated: November 28, 2017

Respectfully submitted,

/s/Misty A. Seemans

Misty A. Seemans, DE Bar # 5975

O.P.D. (Pro Bono; cooperating attorney with

EarthRights International)
820 North French Street, Third Floor
Wilmington, DE 19801
Tel: (302) 577-5126
Email: misty@earthrights.org

Marissa Vahlsing
marissa@earthrights.org
Marco Simons
marco@earthrights.org
Richard Herz*
rick@earthrights.org
Sean Powers
sean@earthrights.org
EARTHRIGHTS INTERNATIONAL
1612 K Street NW, Suite 401
Washington, D.C., 20006
Tel: (202) 466-5188

Jonathan Kaufman
LAW OFFICE OF JONATHAN KAUFMAN
341 W. 24th St. Apt. 21C
New York, NY 10011
Tel: (212) 620-4171

Judith Brown Chomsky,
LAW OFFICES OF JUDITH BROWN CHOMSKY
Post Office Box 29726, Elkins Park, PA 19027
Tel: 215-782-8367

Jose Luis Fuentes
Law Offices of Jose Luis Fuentes
2625 Alcatraz Ave, No 213
Berkeley, California 94705
Tel: (213) 500 – 2500
email: jlflaw@att.net

Counsel for Plaintiffs

* Based in CT; admitted in NY; does not practice in DC's courts.

CERTIFICATE OF SERVICE

I, Misty A. Seemans, hereby certify that on November 28, 2017, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Susan Hannigan (#5342)
Travis S. Hunter (#5350)
Richards, Layton & Finger, P.A.
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
(302) 651-7700
hannigan@rlf.com
hunter@rlf.com

Jeffrey T. Green
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C., 20005
T: (202) 736-8291
jgreen@sidley.com

*Attorneys for Defendant
IFC Asset Management Company, LLC*

I further certify that on November 28, 2017, I caused the foregoing document to be served via electronic mail upon the above-listed counsel and on the following:

Susan Hannigan, hannigan@rlf.com
Travis S. Hunter, hunter@rlf.com
Jeffrey T. Green, jgreen@sidley.com

Attorneys for Defendant.

Dated: November 28, 2017

/s/ Misty A. Seemans
Misty A. Seemans, DE Bar # 5975
O.P.D. (Pro Bono; cooperating
attorney with EarthRights
International)
820 North French Street, Third Floor
Wilmington, DE 19801
misty@earthrights.org